

# **Part 201 Administration Subgroup DRAFT Meeting Summary**

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*November 27, 2006, 9 AM–Noon  
Michigan Association of Counties  
Lansing, Michigan*

## **Work Group Members Present**

Brenda Brouillet, MDEQ RRD, Saginaw District Office  
Dale Corsi, STS Consultants Ltd.  
Carrie Olmstead, MDEQ RRD, Compliance and Enforcement Section  
Flo McCormack, Michigan Association of Counties  
Gary Klepper, Conestoga-Rovers & Associates  
Al Johnston (for Greg Rose), Daimler Chrysler Corporation  
Jeffrey Hawkins, Envirologic Technologies Inc.  
Steve Luzkow, LaSalle Bank Midwest  
Tom Wilczak, Pepper Hamilton, LLP

## **Staff Present**

Julie Bennett and Shivaugn Rayl, Public Sector Consultants

## **Public Present**

Bob Wagner, MDEQ RRD, Grayling District Office  
Robert Delaney, MDEQ RRD  
Rebecca Yedlin, SEMCOG

## **Welcome and Introduction**

Julie Bennett from Public Sector Consultants welcomed the members of the Administration Subgroup of the Part 201 Phase II Discussion Group. Personal introductions followed.

## **Review of Previous Meeting Summary**

Bennett reviewed the summary from the last meeting and asked for comments or proposed changes. Hearing none, the meeting notes were considered final.

## **Review of Solutions Matrix/ Discussion of Members' Focus Areas**

Bennett reviewed the solutions matrix and asked for suggestions and additions/deletions. Discussion of the matrix and group members' top priority focus areas followed. This discussion resulted in prioritized recommendation categories/goals for program improvement upon which the remaining subgroup work will be focused. The recommendation categories/goals for program improvement are described in terms of program goals below.

### *Goal 1: Less adversarial interaction between stakeholders and MDEQ*

Early scoping meetings between stakeholders and the MDEQ were suggested as a way of meeting this goal. Concern was expressed that some certainty must be determined during that scoping meeting for it to add any value to the process. In a sense, these scoping meetings were described as a triage treatment, after which the site would be put in the appropriate category and moved through the Part 201 process. Developing a site screening checklist to clarify required activities up front was discussed as a way to facilitate this. The Complexity Subgroup is working on this; the Administration Subgroup needs to be kept abreast of progress.

Teamwork between parties was expected to accomplish more cleanups and redevelopments. The recommended key to the process is making all the known information about a site available to all parties as early in the process as possible. It was recognized that lack of scientific certainty will hamper finality, and that all parties must recognize that not all risk can be eliminated.

The MiOSHA model was suggested. In this hypothetical, a resource person with agency experience is assigned to counsel private parties on how best to comply with Part 201. This resource person is in a separate division of MDEQ from the decision-making division. The aspiration is that this form of interaction would lead to frank discussion in a confidential and voluntary atmosphere that would lead to more successful remedial action plans (RAPs) in the longer term.

### *Goal 2: Create incentives/drivers for source removal*

The group indicated that source removal or control can provide the most risk reduction for the money spent even though it usually involves large initial expenditures. It was mentioned that businesses, due to budget constraints or operational philosophy, tend to spend money in small monthly increments on tasks like investigation and monitoring, instead of one large sum for removal of the problem. Source removal or control can eliminate the need for investigating and monitoring and can lower overall costs of liability in the long run.

It was recognized that situations arise where source removal is not practical or reasonable. In most cases, however, it was discussed that there should be some priority or reward used to encourage source removal or control. Conversation turned to the idea that there are different parties involved in cleanup, each with different drivers that either favor or disfavor source control/removal. The three categories mentioned were: liable parties, non-liable parties, and emergency/acute risk situations.

Some concern was expressed that mandating source removal or control would hinder redevelopments because the initial capital outlay is potentially large.

Encouraging source removal/control will benefit the public by creating an incentive for risk reduction and will benefit the private sector by reducing future liabilities. Source removal/control also accomplishes more environmental restoration.

One suggested mechanism was to create a low-interest loan fund for source removal/control. Using this fund, parties could make low monthly repayments, as is their preference, but still accomplish up-front risk reduction and liability reduction.

### ***Goal 3: Streamline the administration process***

Suggestions were made to add time deadlines to encourage agency action in an efficient manner.

MDEQ staff commented that one problem they encounter when trying to hold a liable party accountable is formation and dissolution of limited liability corporations (LLCs) specifically designed to avoid Part 201 liability. The liability workgroup is also considering possible solutions to this enforcement roadblock.

### ***Goal 4: Consider outsourcing MDEQ responsibilities***

There is interest in outsourcing some MDEQ responsibilities to the private sector. Licensed consultants have been suggested. The following reasons were cited for shifting some workload to the private sector: reduction of agency workload leading to improved timeliness in decision making, creation of a less adversarial relationship between the regulated and regulating communities, and allowing MDEQ staff to focus time and resources on the complex sites that pose the largest risk to the public.

Concern was expressed that shifting work to the private sector while the MDEQ retains audit authority would make the agency essentially an evaluator to its consultants' work product. Alternatively, it was suggested that consultant projects could be evaluated by peer review and that there should be stiff penalties for consultants that complete substandard work.

Conversation also examined whether consultants' tendencies to work within their clients' budgets would essentially create a conflict of interest between carrying out the mandates of part 201 and serving clients' financial interests. It was suggested that consultants should have the option of filing a statement with the MDEQ stating the remediation is incomplete based on the client's budgetary constraints, thereby protecting the consultant's license and alerting the MDEQ to a limited cleanup.

Group members maintain that protection of the public health and public trust assets remain the top priority if outsourcing is used.

### ***Goal 5: Determine categories to improve site prioritization***

Discussion centered on determining how to categorize sites, (i.e., by liable party, by redevelopment potential, by risk to public health and the environment, or by when the contamination occurred).

## ***Measuring Program Effectiveness***

Subgroup member Gary Klepper distributed a discussion document containing potential metrics to measure program effectiveness. He noted that the charge of the Administration Subgroup is to make recommendations to increase risk reduction and establish effective progress evaluations methods. The group acknowledged that they both need to make specific recommendations regarding program activities as well as methods to evaluate

whether the program is making progress. Kleppers document will help facilitate the latter. The group will use this document and consider other evaluation methods within the process of focusing on priority recommendation categories.

### ***Next Steps***

Members were asked to respond to an e-mail containing the five administration goals/priority recommendation categories with suggestions for accomplishing those goals.

The next meeting will be held in early January at the Michigan Association of Counties office; the date will be determined by e-mail.

The meeting adjourned at noon.